STATE OF INDIANA

DEPARTMENT OF LOCAL GOVERNMENT FINANCE

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Frequently Asked Questions

AUDITORS' ASSOCIATION 2014 SPRING CONFERENCE PROPERTY TAX DEDUCTIONS

Revised May 28, 2014

HOMESTEAD DEDUCTION

1. **Question:** A man and woman had a pre-nuptial done (this was the man's second marriage) to protect the children of his first marriage. The pre-nuptial said the woman's name would not appear on the deed, but when he would die, she would retain ownership of the home and garage for 1 year from the date of his death (but she would not be a life tenant). He died in December 2012. We removed the homestead at the end of 2013 for the pay-2014 billing. Did the wife own the home as of March 1, 2013, due to the pre-nuptial agreement and thus is eligible for the homestead deduction?

Answer: It is unclear whether the pre-nuptial agreement actually gave the wife ownership of the property. Your county attorney would be a good resource in helping you make that determination. Even if the wife was the owner as of March 1, 2013, she would have to have been named on the homestead deduction application or sales disclosure form when her husband filed for the deduction, or she would have had to file her own application after her husband died for the 2013 Pay 2014 cycle. If she was not listed on the husband's deduction application or she did not complete and file a timely homestead deduction application in her own name, then she would not be eligible for the deduction for 2013 Pay 2014.

2. **Question:** Do we have to do the process for ineligible homesteads for any other deduction falsely claimed (like mortgage, over 65, etc.)?

Answer: The ineligible homestead deduction process (IC 6-1.1-36-17) applies to the homestead deduction only and not to other deductions claimed falsely.

3. **Question:** A company owned a property in 2013 and sold it to a couple on December 31, 2013. The couple tried to file a homestead on January 1, 2014, but the property was not yet transferred into their name.
   (1) Does the grace period for filing deductions also apply to the corresponding transfer of property?
   (2) Does the couple have to wait until pay-2015 to receive the homestead deduction because it was in the name of the company for pay-2014? Some taxpayers may fall through the crack during January 1 and January 6 grace period for deductions.

Answer:
1) The homestead deduction application must be "completed and dated in the calendar year for which the person desires to obtain the deduction and filed with the county auditor on or before January 5 of the immediately succeeding calendar year." IC 6-1.1-12-37(e). Eligibility for the deduction, however, depends on whether the applicant had an interest in the homestead on the assessment date or "any date *in the same year after an assessment date*" that an application or sales disclosure form is filed. Thus, while there is a grace period for filing an application, it does not extend to a transfer of property, which must occur before the end of the assessment year.

2) As indicated in the answer to 1), an applicant would be eligible for the deduction if he or she had an interest in the homestead on the assessment date or any date in the same year after the assessment date that an application or sales disclosure form is filed. In this case, if the couple did not own the property by December 31, 2013, then they would be ineligible for the deduction for Pay 2014. If the couple applied for the deduction today, it would apply to the 2014 Pay 2015 cycle.

Please also note that even if the couple had an ownership interest in the property on December 31, the property has to be their principle place of residence during the year for which they are claiming the deduction. If the couple didn't move in until after December 31, this would be a problem.

4. **Question:** Property sells by sheriff's sale after March 1, 2014. Customer has supplied all information to the auditor (via the pink form). Is the auditor able to remove the homestead deduction for 2014-pay-2015 since the property is now deeded to a financial institution or must the homestead deduction remain on the property for a carryover?

Answer: If the homestead deduction was validly in place on March 1, 2014 (meaning the owner receiving the deduction was using the property as his or her principal place of residence), then the deduction stays on for 2014-pay-2015.

5. **Question:** Is there a deadline in which all counties must have their pink forms entered into the Department website?

Answer: The Department is unaware of such a deadline, but encourages counties to update the database as soon as possible.

6. **Question:** It appears that when entering a primary last name/primary SSN/ID that if they are not the primary owner in another county (they are secondary or vice versa) the website will not cross reference counties. Same with the spouse's last name/spouse SSN/ID entered into the website not cross referencing if they are the primary owner in another county.

Answer: This understanding is correct. Search functionality is not currently designed to look at both the primary owner and spouse fields. That seems like a good suggestion, so if there is interest in the tool working this way, the Department can investigate making this type of update.

7. **Question:** We have noticed that not all counties are updating their vacated homesteads in the Department website when a homeowner has moved from one home to another home, making it appear that homeowners have multiple homestead deductions.

Answer: The Department has noticed this as well. County auditors are hereby reminded to update the database as soon as possible and as often as necessary.

8. **Question:** If someone owns two homes and wants to move from their city home to their lake home, does the city home get the benefit of the carryover for the year they move? If not, how is it different than someone who owns two homes, decides to sell one and move into the second home? I understand the home being sold gets the carryover the first year if the home doesn't sell right away.

Answer: If a person moves from his homestead after March 1 to another homestead later that year, he can receive the homestead deduction on both properties for that assessment date. The deduction would come off the first property for the next assessment date. Here, if the person's homestead is the city home and he is moving after March 1 to the lake home to use that as his homestead, then both homes could receive the homestead deduction for that assessment date. In the case of the person who owns two homes and decides to sell one and move into the other, again, if the person was using the first home as his homestead and moved after March 1 into the other home to use it as his homestead, both properties could receive the homestead deduction for that tax cycle, even though the first one has been placed up for sale. Keep in mind that if a person moves from his homestead after March 1 to a property that was not completed on the assessment date, the person can receive a homestead deduction on that new property for that assessment date, but the deduction on the first property would have to be cancelled for that assessment date.

9. **Question:** We have a taxpayer that owns land by the river. They have an RV camper on the property and tell us this is their permanent residence. Can an RV camper be

assessed as a residence if it is licensed and movable? Also, can they file a homestead deduction on this property?

Answer: In order for property to receive the homestead deduction, there must be a dwelling present. Dwelling is defined by statute thusly (from IC 6-1.1-12-37):
"Dwelling" means any of the following:

(A) Residential real property improvements that an individual uses as the individual's residence, including a house or garage.
(B) A mobile home that is not assessed as real property that an individual uses as the individual's residence.
(C) A manufactured home that is not assessed as real property that an individual uses as the individual's residence.

An RV would not fall within the category of residential real property improvement. In order for it to be considered a mobile home, it must meet certain criteria (from IC 6-1.1-7-1):

"Mobile home" means a dwelling which:

(1) is factory assembled;
(2) is transportable;
(3) is intended for year around occupancy;
(4) exceeds thirty-five (35) feet in length; and
(5) is designed either for transportation on its own chassis or placement on a temporary foundation.

Permanent residence or not, if the vehicle is classified as an RV by the BMV and is titled as such, it is subject to excise tax and would not meet the definition of dwelling for purposes of the homestead deduction statute.

As for the land, since a homestead consists of "a dwelling and the real estate, not exceeding one (1) acre, that immediately surrounds that dwelling" (IC 6-1.1-12-37), if there is no dwelling, then there would be no acre "that immediately surrounds that dwelling" to qualify for the deduction.

10. **Question:** This past year we had a taxpayer that checked No on the sales disclosure form to file for the homestead deduction. His mortgage company sent him a letter this year indicating that their mortgage payments would go up. The taxpayer said that we should, as a courtesy, put the deduction on this year since they didn't know they had to file. The taxpayer said he called other counties and those counties agreed that the deduction should be put on the property. What is our auditor required to do?

Answer: In order to receive the homestead deduction, the taxpayer must apply for it. If the taxpayer did not apply for the deduction through the sales disclosure form by checking the appropriate boxes and supplying the required information or if the taxpayer did not timely complete and submit a homestead deduction application form, then the taxpayer was ineligible

for the deduction for that corresponding assessment date due to the failure to apply. There is no mechanism for retroactively applying for a deduction.

11. **Question:** We received payment for an ineligible homestead in May, 2014. Is there a limit on the time we have to refund this amount? What if the taxpayer comes in the next year with a verification of homestead – will we have to issue a refund?

Answer: If the auditor terminated a taxpayer's homestead deduction because the taxpayer failed to file the verification form, there is no deadline by which the taxpayer must come in to present proof of eligibility for that assessment date. If the taxpayer presents proof of eligibility for the assessment date(s) in question, the taxpayer could request a refund for taxes paid (the refund window would be limited to the three-year period set by IC 6-1.1-26), but there would be no interest due on the refund.

In this particular question, however, it appears that the taxpayer's deduction was terminated for ***prior*** years under IC 6-1.1-36-17. In other words, the taxpayer's deduction hasn't merely been terminated going forward for failure to file the verification form. Rather, the property was found to be ineligible for the homestead deduction in prior years and the taxpayer is now being billed for back taxes and penalties. In this case, if the taxpayer has already paid those back taxes and penalties but now disputes the termination of the deduction for those years and is seeking a refund, perhaps the Form 133 Correction of Error process would be available to the taxpayer.

12. **Question:** Can someone still get homestead deduction if the spouse does not have any ID's and is not named in the title?

Answer: The applicant would have to list the spouse's name on the application and the last five digits of the spouse's Social Security number, or, if the spouse doesn't have a Social Security number, the last five digits of the spouse's driver's license number or the last five digits of the spouse's state identification card number. If the spouse does not have a driver's license or a state identification card, the last five digits of a control number that is on a document issued to the spouse by the federal government. If the spouse has no such information available, then the homestead deduction application would be incomplete and thus invalid.

13. **Question:** If a married couple owns 2 separate homes and each one lives in a separate house, would each one be allowed to receive a homestead deduction? What if the names of both people are on both deeds?

Answer: Normally a married couple is entitled to only one Indiana homestead deduction regardless of living arrangements. There is a narrow exception to this whereby one spouse lives in Indiana and the other spouse lives in another state and each spouse maintains a separate principal place of residence in his and her respective names. In this scenario, the Indiana spouse may be able to receive a homestead deduction even if the other spouse is receiving a homestead deduction in his or her state.

14. **Question:** John Doe has a homestead deduction on Home A. He purchases and moves to Home B on July 1. Home B did not have a homestead deduction when he filed one for himself. The auditor removes the homestead deduction from Home A per Department guidance. John Doe sells Home A to Jim Smith on July 31. Jim Smith is not going to be happy that the carryover provision no longer applies, even through the homestead deduction was in place on March 1. Did I understand this correctly?

Answer: No, the deduction would stay on Home A. Again, if a person moves from one homestead after March 1 to another later that year, both properties could potentially receive the homestead deduction for that assessment date. The only exception to this occurs if the new property the taxpayer moves to was not complete on the assessment date. In that case, the taxpayer could still receive a homestead deduction on that new property for that assessment date, but the deduction on the first property would have to be cancelled for that assessment date.

15. **Question:** Is there or was there once a statement in statute IC 6-1.1-12-37 which indicated that a home must be 100% complete by March 1 prior to being eligible for the homestead deduction?

Answer: The Department does not believe there was ever such an explicit statement, but the principle was implied in the definition of homestead as principal place of residence. The Department reiterates that due to legislative action and a recent IBTR decision, land vacant or structures partially completed on the assessment date can potentially receive the homestead deduction for that assessment date.

MORTGAGE DEDUCTION QUESTIONS

16. **Question:** Does a reverse mortgage qualify for a mortgage deduction?

Answer: The mortgage deduction statute, IC 6-1.1-12-1, allows a taxpayer who has a home equity line of credit placed on property the taxpayer owns to receive the mortgage deduction.

OVER 65 & DISABLED/BLIND DEDUCTION QUESTIONS

17. **Question:** Recently, a taxpayer brought in paperwork to sign up for the disabled persons deduction. The taxpayer said the auditor's office was required to do a correction of error for the past 2 years because they were eligible but didn't know they had to come in and file for the deduction.

Answer: A correction of error is appropriate when, through an error of omission by any state or county officer, the taxpayer was not given the proper circuit breaker credit, or any other credit, exemption, or deduction permitted by law. See IC 6-1.1-15-12(a)(8). Assuming the taxpayer was eligible to receive the deduction in those years, he nevertheless failed to file for the deduction

when he needed to. It was not through error or omission by any county or state officer that he was not receiving the deduction, so a correction of error would be inappropriate.

18. **Question:** For the over 65 deduction, if two people own real property whether they be husband & wife, mother & son, etc., and only one of them are over 65 years and qualify for the deduction, do they receive one-half of the deduction until the other person is over 65, or do they receive the full deduction amount, regardless?

Answer: IC 6-1.1-12-9(h) states that if two or more people own real property, a mobile home, or a manufactured home as joint tenants or tenants in common, but not all of the tenants are at least 65 years of age, then the deduction must be reduced by an amount equal to the deduction multiplied by a fraction. The numerator of the fraction is the number of tenants who are not at least 65 years of age, and the denominator is the total number of tenants. Hence, if two people own real property as joint tenants or tenants in common, but only one of them is at least 65 years old, then the amount of the deduction is to be reduced by one-half.

19. **Question:** When the customer files for the disability/age deductions (with income limits) and states that they "do not file federal income tax," how can we prove this? Do we take the customer's word that they no longer file federal income tax?

Answer: In order to substantiate the deduction statement, the applicant must submit for inspection by the county auditor a copy of the applicant's and a copy of the applicant's spouse's income tax returns for the preceding calendar year. If either was not required to file an income tax return, the applicant must subscribe to that fact in the deduction statement.

20. **Question:** Can an illegal alien get the disability deduction with the doctor's letter, even though they cannot qualify for the homestead because they have no U.S. issued ID?

Answer: The disability deduction statute does not require that an applicant include the last 5 digits of their SSN, their state ID number, or a federally issued control number.

VETERAN DEDUCTION QUESTIONS

21. **Question:** Property owner/customer qualifies for an over 65 deduction. Customer is also a disabled veteran. Can we prepare an affidavit for the customer to receive the $70 credit toward his vehicle plates and not use the disabled veterans toward his real estate?

Answer: The excise-only option is available only to vets who do not own or are not buying property that qualifies for a disabled veteran property tax deduction. Here, the vet <u>does</u> qualify for the disabled veteran deduction but he can't receive it only because he's seeking an over 65 deduction instead. If the vet wants excise tax relief, he may need to take the disabled veteran deduction instead of the over 65 deduction and if there is an unused portion of the veteran deduction left after it's applied to his property, he could apply that toward excise taxes.

22. **Question:** Will you consider removing the requirement on the Veterans Excise affidavit that the auditor's signature be notarized? This is a "Department prescribed affidavit" and not statutorily required? It seems redundant and unnecessary.

Answer: Indiana Code 6-6-5-5.2(f) requires the auditor to provide the vet an "affidavit" "stating that the claimant does not own property to which a [veterans deduction] may be applied . . . ". It is a well established legal principle that an affidavit is a written statement of fact which is sworn as to the truth before an authorized officer. See *Dawson v. Beesley*, 242 Ind. 536, 543 (1962). Furthermore, notarizing an affidavit is presumptive evidence of the facts contained in the affidavit (see IC 33-42-2-6), which is signed under penalty of perjury. The Department therefore cautions against completing an affidavit without having it notarized.

23. **Question:** A veteran requests a veterans deduction but, due to the total AV on his/her properties that exceeds the allowed total, is told he cannot be granted the deduction on his/her property. Is that person then eligible to receive ***any amount*** toward excise tax?

Answer: Only the deduction for totally disabled vets/vets 62 and over has an assessed value limit. If a vet does not qualify for this deduction because his AV exceeds the limit, then there would be no unused portion of that deduction that can be applied to excise taxes. If the vet qualifies for the partially disabled vet deduction and there is an unused portion of that deduction left after the deduction has been applied to his property, then the vet could use that portion toward excise taxes. If the vet doesn't qualify for the partially disabled vet deduction, either, then he may be able to pursue the excise-only option.

24. **Question:** If a deed is in the wife's name only and the husband is a disabled veteran, do they get the deduction on property or do they have to get excise because the husband is not in the title?

Answer: Only a disabled veteran who owns the property or is buying the property under recorded contract may receive a vet deduction. If the veteran is not named in the deed, then the excise-only credit may be available to the vet.

25. **Question:** We have the husband and wife on the title, and the husband has the disabled veterans deduction while the wife has the over 65 deduction. The husband dies and the wife applies for the surviving spouse of veteran deduction. Can she keep the over 65 deduction?

Answer: A recipient of the over 65 deduction is ineligible to receive any other deduction except the homestead, supplemental homestead, fertilizer storage, and mortgage deductions. The wife would thus be ineligible for the surviving spouse of veteran deduction so long as she is receiving the over 65 deduction.

26. **Question:** Does a vet that has the vet deduction, but lives in a mobile home, still only get the $70 towards excise tax?

Answer: Assuming the veteran owns or is buying the mobile home under recorded contract, the answer is no. If the vet here is receiving the property tax deduction, any portion of the deduction remaining after it is applied to the mobile home (and possibly the real property the mobile home sits on if it is also owned by the vet) can be applied toward excise taxes. The excise-only credit is available only to vets who do not own or are not buying property that qualifies for a disabled vet property tax deduction.

27. **Question:** Please clarify the amount of deduction a mobile home owner with a VA disability deduction code 1, 2, or 3 would receive - $70.00 affidavit or excise slip?

Answer: A vet who owns or is buying a personal property mobile home may be able to receive a disabled vet property tax deduction (note that the AV of a personal property mobile home cannot be reduced by more than 50%, not including the supplemental homestead deduction). If there is an unused portion of this deduction remaining after the deduction is applied to the mobile home, the vet may use this amount toward the land the mobile home sits on (assuming the vet owns the land) or any personal property taxes (if the vet has any) or toward excise taxes. The vet would receive the Form 128-VET from the auditor and take this to the BMV.

If the vet does not own or is not buying property that qualifies for a disabled vet property tax deduction, the vet may qualify for the excise-only option. The vet would request an affidavit to this effect from the county auditor and provide this to the BMV. The BMV has its own form.

Please note that the IDVA has discontinued the Code classification, which was never a part of the deduction statutes anyway.

MISCELLANEOUS QUESTIONS

28. **Question:** Concerning tax abatements, what do we need to do if a tax abatement was approved by the council, but they overlooked passing a resolution for this abatement? There is already a resolution for this company for a prior abatement. Should the council have had a separate resolution?

Answer: It depends on the specific facts. It's possible, for example, for a town to create an industrial park in a 20-acre cornfield. The resolution declares the legal description as an Economic Revitalization Area. Later as companies want to move into this area, all they need to do is submit a Form SB-1 to set up the number of years and the deduction percentage. Thus, it is possible that an initial resolution is still valid. There is no one size fits all answer, as different attorneys write up the resolution in different fashions.

29. **Question:** If the CNAV's are uploaded from our systems, will we still be able to withhold AV for deduction filings, etc.?

Answer: CNAV upload will not be available this summer/fall. The CNAV application for this year's budget cycle will closely resemble last year's application.

30. **Question:** Is the "home in inventory" deduction for real property parcels still in effect? If so, what is the code site? Where would I find filing information?

Answer: Yes, the Residence in Inventory deduction is still available. It is located at IC 6-1.1-12.8. State Form 54861 is used to apply for the deduction and information about the filing process is included in that form.

31. **Question:** Can we require a new deed or survey if a property owner wants to combine parcels? The assessor sent hundreds of letters out to homeowners to combine parcels. Now we are getting those requests from the assessor on a form with just a short legal and parcel number. We are overwhelmed by requests and it will take more than a year to get them all done.

Answer: If an owner of existing contiguous parcels makes a written request that includes a legal description of the existing contiguous parcels sufficient for the assessing official to identify each parcel and the area of all contiguous parcels, the assessing official must consolidate more than one existing contiguous parcel into a single parcel to the extent that the existing contiguous parcels are in a single taxing district and the same section. For existing contiguous parcels in more than one taxing district or one section, the assessing official must, upon written request by the owner, consolidate the existing contiguous parcels in each taxing district and each section into a single parcel. An assessing official must consolidate more than one existing contiguous parcel into a single parcel if the assessing official has knowledge that an improvement to the real property is located on or otherwise significantly affects the parcels. The Department encourages county officials to confer with their county attorneys for guidance concerning their powers to demand new deeds or surveys. IC 6-1.1-5-16

32. **Question**: When the assessment date changes to January 1, will the deductions still use the March 1 date for removing deductions?

Answer: No. January 1 will be the assessment date to which deductions correspond. Any deductions that are validly on a property as of that date should remain on that property for taxes due and payable in the following year.

33. **Question:** Has any county prepared a flow chart showing the specific filing requirement for each deduction that they would be willing to share?

Answer: The Department is not aware of any county-made flow chart on deduction filings. The Department would point out that the Property Tax Benefits Form, available at https://forms.in.gov/Download.aspx?id=6015, does include filing information.

34. **Question:** Since deductions are based on date of instrument, how do we handle re-recordings that change the ownership? Example: Donald Duck is the deeded owner (DOI = Feb. 2007) and is getting credit for homestead. Donald Duck quit-claims property to his nephews (DOI = Feb. 2012), no new deductions filed. We remove homestead for 2012 pay 2013, but then they re-record the deed to add "Donald Duck retains a life estate" on 6-1-14. Are we required to go back and give them the homestead deduction for 2012 pay 2013 and 2013 pay 2014 plus refund?

Answer: Since Donald had no ownership interest in the property on March 1, 2012 (and he didn't acquire an ownership interest later in 2012 and reapply for the deduction), the homestead deduction (and probably all other deductions) in his name would be removed for 2012 Pay 2013. If Donald wants the deduction for 2014 Pay 2015, he would need to re-apply for it.